IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.918 OF 2004
ALONG WITH
APPEALS FROM ORDER NOS.914/2004, 915/2004, 916/2004, 917/2004, 919/2004, 920/2004, 921/2004, 922/2004 AND 923/2004.

APPEAL FROM ORDER NO.918 OF 2004
IN
NOTICE OF MOTION NO.5066 OF 2003
IN
S.C.SUIT NO.5920 OF 2003

M/s.Dhanalaxmi Builders and others).. Appellants (Org.Defendants)

Versus

Mrs.Santosh Rani Gupta and another).. Respondents (Org.Plaintiffs)

Mr.Navroj Seervai with Mr.Kevic Setalvad i/b.Vimla & Co. for the Appellants.

Mr.N.V.Gangal with Mr.Avinash Sangurdekar i/b.A.A. Malgaonkar for the Respondents.

WITH

APPEAL FROM ORDER NO.914 OF 2004
IN
NOTICE OF MOTION NO.5069 OF 2003
IN
S.C.SUIT NO.5923 OF 2003

M/s.Dhanalaxmi Builders and others).. Appellants (Org.Defendants)

Versus

Mrs.Santosh Rani Gupta and another).. Respondents (Org.Plaintiffs)

WITH

APPEAL FROM ORDER NO.915 OF 2004
IN
NOTICE OF MOTION NO.5074 OF 2003

IN
S.C.SUIT NO.5928 OF 2003

M/s.Dhanalaxmi Builders and others).. Appellants (Org.Defendants)

Versus

Manav Sanjiv Gupta).. Respondent (Org.Plaintiff)

WITH

APPEAL FROM ORDER NO.916 OF 2004
IN
NOTICE OF MOTION NO.5067 OF 2003
IN
S.C.SUIT NO.5921 OF 2003

M/s.Dhanalaxmi Builders and others).. Appellants (Org.Defendants)

Versus

Mrs.Madhu Gupta).. Respondent (Org.Plaintiff)

WITH

APPEAL FROM ORDER NO.917 OF 2004
IN
NOTICE OF MOTION NO.5070 OF 2003
IN
S.C.SUIT NO.5924 OF 2003

M/s.Dhanalaxmi Builders and others).. Appellants (Org.Defendants)

Versus

Miss Sneha Gupta).. Respondent

WITH

APPEAL FROM ORDER NO.919 OF 2004
IN
NOTICE OF MOTION NO.5072 OF 2003
IN
S.C.SUIT NO.5926 OF 2003

M/s.Dhanalaxmi Builders and others).. Appellants (Org.Defendants)

Versus

Ashish Kumar Kataruka).. Respondent

(Org.Plaintiff)

WITH

APPEAL FROM ORDER NO.920 OF 2004
IN
NOTICE OF MOTION NO.5068 OF 2003
IN
S.C.SUIT NO.5922 OF 2003

M/s.Dhanalaxmi Builders and others .. Appellants
(Org.Defendants)

Versus

Gupta Paper House Pvt. Ltd. .. Respondents
(Org.Plaintiffs)

WITH
APPEAL FROM ORDER NO.921 OF 2004
IN
NOTICE OF MOTION NO.5075 OF 2003
IN
S.C.SUIT NO.5929 OF 2003

M/s.Dhanalaxmi Builders and others .. Appellants
(Org.Defendants)

Versus

M/s.Paper Villa .. Respondents
(Org.Plaintiffs)

WITH
APPEAL FROM ORDER NO.922 OF 2004
IN
NOTICE OF MOTION NO.5073 OF 2003
IN
S.C.SUIT NO.5927 OF 2003

M/s.Dhanalaxmi Builders and others .. Appellants
(Org.Defendants)

Versus

Gupta Family Benefit Trust .. Respondents
(Org.Plaintiffs)

AND

APPEAL FROM ORDER NO.923 OF 2004
IN
NOTICE OF MOTION NO.5071 OF 2003
IN
S.C.SUIT NO.5925 OF 2003

M/s.Dhanalaxmi Builders and others .. Appellants

(Org.Defendants)

Versus

Ashish Kumar Kataruka).. Respondents
(Org.Plaintiffs)

Mr.Kevic Setalvad with Mr.Dhiren Shah i/b.Vimla & Co. for the Appellants.

Mr.N.V.Gangal with Mr.Avinash Sangurdekar i/b.A.A. Malgaonkar for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 8TH DECEMBER 2004

P.C.:

. The Appellants (original Defendants) have impugned the order passed by the trial Court appointing a Court Receiver in respect of the building known as Dhanalaxmi Vihar. While doing so, the trial Court has permitted the Appellants to complete the construction of the building known as Dhanalaxmi Vihar. The trial Court has further injuncted the Appellants from creating third party rights in respect of all the flats until further orders. The trial Court has also directed the Appellants to submit a statement of the Agreements executed between the flat purchasers and the Appellants within one week from the date of the order. In the alternative, the Appellants were directed to deposit in Suit No.5920 of 2003 a sum of Rs.31,04,000/- with interest at the rate of 2% per month from February 1990 upto date within one month from the date of the order. This order has been subsequently corrected and the Appellants were directed to deposit Rs.30,00,000/-

instead of Rs.31,04,000/- with interest as aforesaid. The same order has been passed in Notice of Motion Nos.5069/2003, 5074/2003, 5067/2003, 5070/2003, 5072/ 2003, 5068/2003, 5075/ 2003, 5073/2003 and 5071/2003 in Suit Nos.5923/ 2003, 5928/2003, 5921/2003, 5924/2003, 5926/2003, 5922/2003, 5929/2003, 5927/2003 and 5925/ 2003. These orders have been challenged in Appeals From Order Nos.914/2004, 915/2004, 916/2004, 917/2004, 919/2004, 920/2004, 921/2004, 922/2004 and 923/2004 respectively. Since the facts in all the Appeals From Order are similar, a common order is being passed.

2. The Appellants claim that the Respondents (original Plaintiffs) had merely acted as financers for the construction of a building known as Dhanalaxmi Apartments. The Appellants had obtained finance from them and had also at the same time executed certain agreements with the Respondents in the nature of collateral securities. These agreements were executed in the year 1990. It appears that construction of a building known as Dhanalaxmi Vihar commenced sometime in August 2003. All, except four flats and three shops, have already been sold according to the Appellants. The Appellants, therefore, are aggrieved by the order passed by the trial Court directing that the Court Receiver be appointed for the entire building.

3. A submission is made by Mr.Seervai, learned Counsel for the Appellants, that at the highest the Appellants would have to pay damages which significantly have not been prayed for in the Suit. He submits that the Appellants are ready and willing to deposit Rs.30,00,000/- with 1% interest per month from January 2001 without prejudice to their rights and contentions in the Suit. He further submits that the Court Receiver should never have been appointed for the entire building since almost all the flats and a few shops have been sold out to third parties and in such a situation appointment of a Court Receiver would not be appropriate for securing the rights of the parties.

4. Mr.Gangal, learned Advocate for the Respondents, on the other hand, submits that there were no loan agreements at all and in fact there were agreements to purchase nine flats and one shop in a building which was to be constructed by the Appellants. He submits that since possession of the suit premises has not been handed over to any of the prospective buyers, the trial Court thought it fit to appoint the Court Receiver in respect of this entire building. He further submits that there is no registered agreement between the so-called flat purchasers and the Appellants and, therefore, no relief ought to be granted to the Appellants in the present Appeals.

5. The submission made by Mr.Gangal that there are no registered agreements executed between the flat purchasers and the Appellants does not seem to be correct. In Appeal From Order (Stamp) No.30321 of 2004 filed by one Dr.(Ms.) Aarti Dinesh Shah, it has been contended that Shop No.5 has been purchased by her and a copy of the registered agreement has been annexed to the Appeal Memo. Similarly, in Civil Application No.1512 of 2004 filed by Rajendra Kantilal Shah and another, which is a Civil Application filed for leave to appeal against the order of the trial Court, a statement is made that by a registered agreement entered into by the Applicant and the Appellants herein, Flat No.302 on the third floor of the suit building has been sold to him. A list of flat purchasers has been filed before the trial Court. Similarly, the list which is annexed at Exhibit "A" in Civil Application No.1259 of 2004, discloses that, all except four flats and three shops have been sold. The dates when the agreements were executed by the Appellants and the flat/shop purchasers, date of registration of the agreements and the amount received for each of the flat/shop has also been mentioned. In view of this position, I am inclined to set aside the order passed by the trial Court appointing the Court Receiver for the entire building. Furthermore, the direction of the trial Court restraining the Appellants

from creating any further rights in respect of the flats also will have to be set aside. The offer made by Mr.Seervai on behalf of the Appellants that Rs.30,00,000/- would be deposited in Court along with interest at the rate of 1% per month from January 2001 is accepted.

6. However, it would be necessary to protect the interest of the Respondents also during the pendency of the Suit. It is seen from the array of parties in the Appeals that one Sanjiv Gupta, the members of his family and his family concerns are the Plaintiffs in all the Suits. Each of the Suits are in respect of flats admeasuring approximately between 500 sq. ft. and 600 sq.ft. In my view, if the Court Receiver is appointed for the four unsold flats, each admeasuring approximately 1000 sq.ft. and one shop, the Plaintiffs would be adequately protected.

7. The impugned order is set aside and the following order is passed which shall continue to be in operation during the pendency of the Suit :

(i) The Court Receiver, High Court, Bombay, is appointed as Receiver to take charge of Flat Nos.104, 303, 401 and 704 and

Shop No.3 in the building known as Dhanalaxmi Vihar situate at Plot No.218, T.P.Scheme No.V, Vile Parle (East), Mumbai.

(ii) The Respondents may enter into an agency agreement in respect of the aforesaid premises on the usual terms and conditions within eight weeks from today. In the event the Respondents do not want to enter into agency agreement or are unable to enter into such an agreement, the Appellants are free to enter into an agency agreement with the Court Receiver on the same terms and conditions. The Respondents will intimate to the Appellants whether they have entered into an agency agreement with the Court Receiver within eight weeks from today.

(iii) The Appellants will deposit in the trial Court in Suit No.5920 of 2003 the amount of Rs.30,00,000/- along with interest at the rate of 1% per month from January 2001 within three weeks from today. The amount so deposited,

will be invested by the trial Court in a Fixed Deposit of a Nationalised Bank initially for a period of three years and the same shall be renewed thereafter during the pendency of the Suit.

8. Appeals From Order disposed of accordingly.

9. In view of the Appeals From Order being disposed of, nothing survives in Civil Applications Nos.1259/2004, 1255/2004, 1256/2004, 1257/2004, 1258/2004, 1260/2004, 1261/2004, 1262/2004, 1263/2004 and 1264/2004 and the same are disposed of accordingly.

10. On the request of Mr.Gangal, the operation of this order is stayed for four weeks from today. However, Court Receiver shall not take possession of the suit building for four weeks from today.

11. Certified copy expedited.